

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

JUL 31 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

ORIGINAL

In the Matter of)	
)	CC Docket No. 01-73
Joint Applications of Telephone and Data)	
Systems, Inc. and Chorus Communications,)	ITC-T/C-20010307-00128
Ltd. for Authority to Transfer Control of)	ITC-T/C-20010307-00129
Commission Licenses and Authorizations)	
Pursuant to Sections 214 and 310(d) of the)	UIS File Nos.
Communications Act and Parts 22, 63 and 90)	0000352422
of the Commission's Rules)	0003524326, <i>et al.</i>

To: Wireless Telecommunications Bureau

**PETITION FOR WAIVER AND
TO EXTEND DIVESTITURE DEADLINE**

Michael de León Hawthorne, the trustee ("Trustee") of the above-captioned wireless assets divestiture trust (the "Trust") hereby requests through counsel that the Federal Communications Commission (the "Commission") extend the duration of the Trust. As set forth below, in its previous extension request, and in previous bi-monthly reports to the FCC, the Trustee has diligently attempted to divest the assets held by Trustee (the "Subject Interest") to a third party. However, due to the difficulty experienced by Trustee in attempting to sell the Subject Interest, especially during this extremely difficult market for communications interests, the Trustee requests that the Commission extend the current September 3, 2002 divestiture deadline for an additional 180 days. Such an extension will serve the public interest by providing additional time for the Trustee to identify an appropriate third party and divest the Subject Interest in an orderly manner.

I. BACKGROUND

As a condition to the approval of the transfer of control applications filed on February 8, 2001 and March 7, 2001 by Telephone and Data Systems, Inc. ("TDS") and Chorus Communications, Ltd. ("Chorus") (collectively, the "Parties") the Commission required the divestiture of certain overlapping interests in wireless licenses held by these parties.¹ To afford themselves sufficient time to promptly divest the interest in the

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¹ See *Joint Application of Telephone and Data Systems, Inc. and Chorus Communications, Ltd.*, Memorandum Opinion and Order, 16 FCC Rcd 15293 (2001). Chorus was required to divest its interest in an F-Block PCS license, as well as its 18.132%

licenses, and so as not to delay closing of their merger, the Parties requested authority to transfer Chorus' indirect 18.132% minority interest in the Madison SMSA Limited Partnership to the Trust; an arrangement which would allow consummation of the Parties' merger without violating 47 C.F.R. § 22.942. On August 10, 2001, the Commission issued an Order consenting to the formation of the Trust.² The Trustee and Mid-Plains, Inc. entered into an agreement (the "Trust Agreement") through which the Subject Interest was transferred to the Trust and the Trustee's obligations were memorialized. The Trustee took control of the Subject Interest on September 4, 2001, creating an original deadline of March 4, 2002 for divestiture. At the Trustee's request, the Commission granted an additional 180 days – until September 3, 2002 – to divest the Subject Interest.³

II. REQUEST FOR WAIVER TO EXTEND DIVESTURE DEADLINE

The Trust was originally anticipated to last six months, in accordance with the Commission's decision in its 1998 biennial review proceeding "that a licensee may use a trust for divestiture purposes if the trust is of limited duration (six months or less)."⁴ The Commission has stated that, if licenses transferred to the trust are not transferred from the trust before the trust expires, the licenses will be cancelled.⁵ As noted above, the Trustee was initially required to divest the Subject Interest by March 4, 2002. The Trustee requested a waiver of the Trust's expiration, which the Commission granted, extending the deadline until September 3, 2002. Despite the Commission's recent relaxation to the cellular cross-interest rules, divestiture of the Subject Interest is still required because the Subject Interest includes part of an interest in an RSA license. However, the Trust Agreement permits an extension of the Trust, upon approval of the Commission. In order to avoid any uncertainty regarding the Subject Interest, which would only add to the

interest in the Madison SMSA Limited Partnership, which holds ownership interests in cellular licenses for the Madison, Wisconsin MSA, the Janesville-Beloit, Wisconsin MSA, and Wisconsin 9B2 RSA.

² *Id.* Chorus filed an application to transfer control of its subsidiary's interest in an F-Block PCS license. See File No. 0000398367. Therefore, the instant request relates only to the Madison SMSA Limited Partnership interest currently held by the Trustee.

³ See *FCC Public Notice*, "Wireless Telecommunications Bureau Grants Request of Michael de León Hawthorne, Trustee, to Extend Divestiture Trust, DA 02-525, released March 4, 2002.

⁴ See *In the Matter of 1998 Biennial Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers*, WT Docket Nos. 98-205 and 96-59, GN Docket No. 93-252, Report and Order, FCC 99-244, 1999 WL 734848, at ¶117.

⁵ *Id.* at n. 263.

challenge of divesting the Subject Interest, the Trustee respectfully requests that the Commission act on the instant request on or before September 3, 2002.

As set forth in detail in previously filed Trustee Reports⁶, since the Subject Interest was transferred to the Trust, the Trustee has worked diligently to divest the Subject Interest. Initially, the Trustee gathered information and created a due diligence "book," which contained data necessary for prospective purchasers to evaluate the Subject Interest. Thereafter, the Trustee actively marketed the Subject Interest to numerous prospective purchasers. Through the Trustee Reports, the Trustee has kept the Commission apprised of the details of his activities every sixty days, as required pursuant to the Trust Agreement and the Commission's order consenting to the divestiture. During this time, prospective purchasers, including one broker in wireless interests, initiated customary due diligence inquiries related to the Subject Interest. Notwithstanding these consistent efforts, the Trustee has received no offers to purchase the Subject Interest. Since the Subject Interest was transferred to the Trust in September 2001, difficult economic conditions generally, and particularly in the wireless telecom sector, as well as uncertainty regarding the spectrum cap rules, and the inherent difficulty of selling a passive, non-controlling, minority interest in a cellular license, have all added to delays in divesting the Subject Interest.

Specifically, the telecommunications industry as a whole has seen unprecedented reduction in value in the last year.⁷ The technology sector has been further undermined by accounting scandals and corporate self-dealing.⁸ In the mobile wireless sector, the FCC has acknowledged increasing competition, noting that "equity analysts and other industry observers typically describe wireless price competition in the United States

⁶ See, Request for Confidentiality in Connection with Second Trustee Report in the Matter of Joint Applications of Telephone and Data Systems, Inc. and Chorus Communications, Ltd. for Authority to Transfer Control of Commission Licenses and Authorizations Pursuant to Sections 214 and 310(b) of the Communications Act and Part 22, 63 and 90 of the Commission's Rules, and Trustee Report, filed November 2, 2001, and subsequent reports filed January 2, 2002, March 1, 2002, April 30, 2002, and June 28, 2002, respectively. Copies will be provided upon request.

⁷ "Telecom Sector May Find Past Is Its Future," Washington Post, July 8, 2002 at A01. ("About 500,000 people have lost their jobs. Dozens of companies have gone bankrupt. As much as half a trillion dollars in investments has evaporated . . . No one knows how much of the investment -- \$326 billion in stock and bonds, plus \$554 billion in bank loans -- has been destroyed, but it is surely a huge sum . . . at least 63 telecommunications companies have landed in bankruptcy since 2000, according to Bankruptcydata.com. As WorldCom, the nation's second-largest long distance company, struggles to survive, and as authorities probe the books at Qwest Communications International, which runs local telephone networks in 14 Western states, the most expensive failures may still lie ahead.")

⁸ "Few Buyers for WorldCom Mobile Biz," RCR July 1, 2002 at 1. ("Even if WorldCom could sell its [cellular resale, paging and MMDS] wireless assets, the company likely won't get a good price for any of them in a battered wireless market that took yet another hit once WorldCom's accounting errors were made public.")

as 'competitive,' 'intense,' and 'aggressive.'"⁹ In addition, investors have soured on wireless stocks, causing many companies to experience new lows in stock prices which, in turn, limits their ability to acquire cellular interests, especially non-controlling positions.¹⁰ Uncertainty regarding the regulatory environment after the spectrum cap is lifted (e.g., pending merger guidelines) has also been blamed for lack of consolidation in the wireless sector.¹¹ The overall disintegration of the wireless telecom market, a factor clearly beyond the Trustee's control, has contributed significantly to the delay in divesting the Subject Interest and, accordingly, the Trustee is compelled to request a further extension of time to divest the Subject Interest.

The Commission has authority to grant a waiver of its rules if it finds that the underlying purpose of the rule would not be served and that grant of the waiver would be in the public interest.¹² The Commission has previously found that transfer of controlling interests in numerous markets to divestiture trusts is in the public interest.¹³ In the instant case, the Subject Interest involves only a passive, non-controlling, minority interest in a relatively small number of markets. Indeed, the Commission found that multiple extensions of time were in the public interest when such extension would allow an orderly disposition of the ownership interest.¹⁴

⁹ *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Seventh Report, FCC 02-179, rel. July 3, 2002, __ FCC Rcd __ (2002).

¹⁰ "Wireless Wreck on Wall Street," RCR Wireless News, June 17, 2002 at 1. ("The wireless industry suffered what could be its biggest hit on Wall Street Friday as a number of investment firms cut their investor recommendations on a majority of wireless operators' stock following a round of revised second quarter estimates provided by carriers . . . While wireless carriers' stocks have been falling steadily since the beginning of the year and some have suffered similar weekly binges, this latest setback may be more than some investment firms and investors can stomach or justify. 'We have all but given up trying to predict when these stocks might recover, given the incredibly poor sentiment in the space at this time,' said Thomas Weisel Partners in a report . . .")

¹¹ "As January 1 Looms, Questions Surround Consolidation," RCR Wireless News July 1, 2002 at 14. ("Wireless carriers that at one time were flush with cash bolstered by sky-high stock prices and limitless growth have seen the money well run dry and investors are fleeing anything having to do with wireless communications . . . several barriers may limit the combination of merger partners, including regulatory scrutiny and the pending merger guidelines from the FCC, especially in the near term.")

¹² 47 C.F.R. § 1.925(b)(3)(i).

¹³ *GTE Corp.*, 15 FCC Rcd 11608 (WTB 2000); *Vanguard Cellular Systems, Inc.*, 14 FCC Rcd. 3844 (WTB 1999).

¹⁴ See, e.g., *VoiceStream Wireless Corp.*, 15 FCC Rcd 9128 (WTB 2000); *FCC Public Notice*, Wireless Telecommunications Bureau Grants Request of Joseph J. Simons, Esq., Trustee, to Extend Divestiture Trust, DA 01-467 (rel. February 21, 2001); *FCC Public Notice*, Wireless Telecommunications Bureau Grants Request of Joseph J. Simons, Esq., Trustee, to Extend Divestiture Trust, DA 01-1963 (rel. August 21, 2001).

The Commission may also grant a waiver if the Commission finds that the applicant has no reasonable alternative.¹⁵ Since the Trustee has undertaken diligent, consistent – even creative - efforts to sell the Subject Interest, but has had no offers due to circumstances beyond his control, the Trustee requests that the Commission grant the waiver request on this alternative basis.

The Trustee requests that the Commission consent to extend the duration of the Trust for an additional 180 days under the same terms and conditions as those contained in the Trust Agreement. The Trustee will continue his diligent efforts to identify a qualified purchaser with this additional time. Such an extension of the divestiture deadline would serve the public interest by and would be consistent with the Commission's past practice of granting extensions to similarly situated trustees.

For the foregoing reasons, the Trustee requests a waiver of the Commission's requirements governing the duration of divestiture trusts and an extension of the current September 3, 2002 expiration date of the Trust. Specifically, the Trustee requests that this expiration date be extended an additional 180 days in order to allow the Trustee additional time to identify a prospective purchaser and dispose of the Subject Interest in an orderly fashion.

¹⁵ 47 C.F.R. § 1.925(b)(3)(ii).

Respectfully submitted,

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